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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,194	12/21/2001	Vitaly Alekseevich Smirnov	01830/HG	6249

1933 7590 09/04/2003

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NEW YORK, NY 10017-2023

EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 09/04/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/019,194

Applicant(s)

SMIRNOV ET AL.

Examiner

Traviss C McIntosh

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-16 and 28-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 13-16 and 28-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |                                                                                                                    |                                                                             |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3 and 5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

The Amendment filed June 19, 2003 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claims 11-16 have been amended.

Claims 17-27 have been cancelled.

Claims 28-42 have been added.

Remarks drawn to rejections of Office Action mailed December 17, 2002 include:

Claim objections: which have been overcome by applicant's amendments and have been withdrawn.

112 2<sup>nd</sup> paragraph rejections: which have been overcome by applicant's amendments and have been withdrawn.

103(a) rejection: which has been overcome by applicant's arguments and has been withdrawn.

An action on the merits of claims 11-16 and 28-42 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office action.

### ***Claim Objections***

Claims 40-42 are objected to as the recitation "wherein said vacuum distillation is carried out a temperature of 50-60°C and a pressure of 750-800 mm of mercury" is cumbersome to read.

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The claims would be more favorably considered if written as “wherein said vacuum distillation is carried out at a temperature of 50-60°C and at a pressure of 750-800 mm of mercury”.

***Claim Rejections - 35 USC § 112***

Claims 13-16 and 28-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13-16 are indefinite as it is unclear how the limitations set forth in the claims further limit the claims from which they depend. Claim 13, for example, reads “the anthocyanic colorant according to claim 11, wherein its natural red color is retained when it is exposed to an acid environment having a pH from 2.0 to 7.0”. Claim 11 is a composition claim, and claim 13 is drawn to properties associated with the composition. It is unclear how the properties of the composition can further limit the composition, or how a method acted upon the composition (subjecting to various pH's or freezing, boiling, etc. of claims 15 and 16) materially effects the composition as claimed, as the composition as set forth in claim 11 must inherently maintain its natural red color when exposed to the various environments, as the composition of claims 13-16 have no additional moieties included therein which serve the purpose of maintaining the coloring in the various environments. Clarity is respectfully requested.

Claims 13 and 14 are indefinite wherein the claims read “it is exposed to an acid environment having a pH from 2.0 to 7.0”, as an environment having a pH of 7.0 is not an acidic environment. Claiming a pH of 7 as being acidic is contrary to the accepted understanding that a pH of 7 is neutral. Clarity is respectfully requested.

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Claims 28-33 are indefinite as the recitation in a dependent claim of the source of an active agent to be used as a starting material for a composition, wherein the “source of the active agent” does not result in a patentably distinguishable composition, renders the claim(s) in which it occurs and which depend therefrom indefinite for failing to distinctly articulate how such a recitation further limits the composition from which said dependent claim(s) applicant regards as the invention. That is, it is unclear how said active agent's source impacts the composition from which it depends. The composition of claim 11 comprises specific compounds, and it is unclear how the limitation of “the composition being prepared from corn vegetable pulp” would produce a materially different composition from a composition containing the identical compounds being prepared from other sources. Clarity is respectfully requested.

Claim 34 recites the limitation “said **extract ion** solvent” in the 1<sup>st</sup> and 2<sup>nd</sup> line of page 5 of the amendment. There is insufficient antecedent basis for this limitation in the claim as there has been no previous recitation of an “extract ion solvent”. It appears that this may have been intended by applicants to be “said **extraction** solvent”, which would have proper antecedent basis. Clarity is respectfully requested.

All claims which depend from an indefinite claim are also indefinite. *Ex parte Cordova*, 10 U.S.P.Q. 2d 1949, 1952 (P.T.O. Bd. App. 1989).

Claims 11 and 12 appear to be allowable.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C McIntosh whose telephone number is 703-308-9479. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 703-308-4624. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Traviss C. McIntosh  
August 29, 2003



James O. Wilson  
Supervisory Patent Examiner  
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